

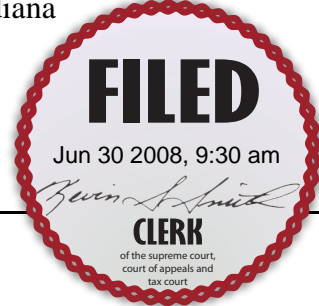
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**IN THE  
COURT OF APPEALS OF INDIANA**

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DANIEL JORDAN, MICHAEL D. JORDAN, and )  
TROUTWINE ESTATES DEVELOPMENT )  
COMPANY, LLC, )

Appellants-Defendants/Counter Plaintiffs, )

vs. )

STEVE MANICH, )

Appellee-Plaintiff/Counter Defendant. )

No. 45A03-0711-CV-541

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APPEAL FROM THE LAKE CIRCUIT COURT  
The Honorable Lorenzo Arredondo, Judge  
Cause No. 45C01-0009-CP-1144

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**June 30, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Daniel Jordan (“Jordan”), Michael D. Jordan (“Michael”), and Troutwine Estates Development Company, LLC (“Troutwine”) (collectively, “Appellants”), appeal from the denial of their motions for judgment on the evidence and from the jury’s general verdict in favor of Steve Manich for \$925,000 on his claims for breach of contract and breach of fiduciary duty. We affirm.

## **Issues**

- I. Did the trial court err in admitting certain evidence and in denying Appellants’ motions for judgment on the evidence?
- II. Is there sufficient evidence to support a finding that Manich was a member of Troutwine?

## **Facts and Procedural History**

The relevant facts most favorable to the jury’s verdict indicate that Jordan, a real estate developer, discussed with Manich, a licensed professional engineer and registered land surveyor, the prospect of forming a limited liability company (“LLC”) for the purpose of developing land that Jordan owned into a subdivision with multi-family housing units. Ultimately, the two agreed that Jordan would contribute the land to the LLC and that Manich, through his subchapter S corporation, ComSub Engineering and Design, Inc. (“ComSub”), would contribute the engineering and surveying services required to obtain municipal approval of the project.<sup>1</sup> If the project was not approved, Manich would not be paid for his

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<sup>1</sup> In their statement of facts, Appellants claim that “Jordan agreed to give Manich one-third (1/3) of the profits if he supervised the whole subdivision and there were no problems.” Appellants’ Br. at 2 (citing Tr. at 263, 384). Manich contradicted this claim at trial. Tr. at 127-28. We remind Appellants’ counsel that pursuant to Indiana Appellate Rule 46(A)(6)(b), an appellant’s statement of facts “shall be stated in accordance with the standard of review appropriate to the judgment or order being appealed.”

services, the fee for which was \$58,000. If the project was approved, Manich would receive one-third of the resulting net profits, with Jordan to receive one-third and his son Michael to receive one-third.

The original subdivision plan called for the construction of 432 multi-family housing units, in three phases, on seventy-two-acres. In March 1994, the City of Crown Point approved Phase I. On December 15, 1994, Manich and Jordan signed the articles of organization for Troutwine, which were subsequently filed with the Indiana Secretary of State. The articles list Manich, Jordan, and Michael as managers of Troutwine. Also on that date, Manich, Jordan, and Michael signed Troutwine's operating agreement. The agreement lists the three men as members of Troutwine, with each having a one-third interest. The agreement states that "the net income (taking into account all salaries, bonuses, or guaranteed payments made to Members), loss or capital gains of the Company for each fiscal year of the Company shall be allocated among the Members according to their respective Percentage Interests." Appellants' App. at 34.

A building permit was obtained in May 1995, and the construction of Phase I began shortly thereafter. Manich and ComSub performed additional duties during this time, including supervising the invoicing and the construction.<sup>2</sup> In 1996, the City requested that Phases II and III be developed with single-family housing. Jordan and Manich agreed to do

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<sup>2</sup> According to Manich, Appellants paid ComSub's initial \$58,000 fee in full by 1996. ComSub did not receive payment for the additional services, however, and sued Appellants in Lake Superior Court in May 1999. Appellants counterclaimed for professional negligence. The trial court found in favor of ComSub on a quantum meruit theory and found against Appellants on their counterclaim. On appeal, another panel of this Court upheld ComSub's quantum meruit recovery. *Troutwine Estates Dev. Co. v. ComSub Design & Eng'g, Inc.*, 854 N.E.2d 890, 898 (Ind. Ct. App. 2006), *trans. denied* (2007).

so and agreed upon a revised plan. When Jordan asked for Manich's tracings for the plan, Manich stated that he would not provide them unless he received a signed contract. Jordan refused. In July 1998, Manich sent a letter to the City stating that he would no longer supervise the project. In January 1999, Jordan and Michael removed Manich as a manager of Troutwine.

In September 2000, Manich filed a complaint against Appellants alleging that Jordan and Michael had breached Troutwine's operating agreement and their fiduciary duties as fellow members.<sup>3</sup> A jury trial commenced on October 9, 2007. At the conclusion of Manich's case in chief, Appellants moved for judgment on the evidence pursuant to Indiana Trial Rule 50 on the basis that he had failed to establish damages in the form of lost profits to which he was entitled pursuant to the operating agreement. The trial court denied the motion. At the close of evidence, Appellants renewed their motion, which the trial court denied. On October 12, 2007, the jury returned a general verdict of \$925,000 in favor of Manich. This appeal ensued.

## **Discussion and Decision**

### ***I. Admission of Evidence/Denial of Motions for Judgment on the Evidence***

Appellants assert that the trial court erred in admitting certain evidence that they claim was Manich's only basis—and an insufficient basis—for proving damages.

We review decisions concerning the admissibility of evidence for an abuse of discretion. An abuse of discretion occurs if the trial court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court. A trial court may also abuse its discretion if its decision is without reason or is based upon impermissible considerations. Even if a trial

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<sup>3</sup> Manich's complaint does not appear in the record before us.

court errs in a ruling on the admissibility of evidence, this court will only reverse if the error is inconsistent with substantial justice.

*Armstrong v. Gordon*, 871 N.E.2d 287, 293 (Ind. Ct. App. 2007) (citations and quotation marks omitted), *trans. denied* (2008).

Because the disputed evidence was both inadmissible and insufficient to establish Manich's damages, Appellants claim, the trial court erred in denying their motions for judgment on the evidence.

It is axiomatic that in reviewing the trial court's ruling on a motion for judgment on the evidence the reviewing court must consider only the evidence and reasonable inferences most favorable to the nonmoving party. Judgment on the evidence in favor of the defendant is proper when there is an absence of evidence or reasonable inferences in favor of the plaintiff upon an issue in question. The evidence must support without conflict only one inference which is in favor of defendant. If there is any probative evidence or reasonable inference to be drawn from the evidence or if there is evidence allowing reasonable people to differ as to the result, judgment on the evidence is improper.

*Paragon Family Rest. v. Bartolini*, 799 N.E.2d 1048, 1051 (Ind. 2003) (citation and emphases omitted).

Appellants first contend that the trial court abused its discretion in admitting Plaintiff's Exhibit 15, a four-page exhibit that contains various cost and pricing estimates for fifteen lots containing the 432 multi-family units called for in the original subdivision plan. At trial, Appellants' counsel objected to the exhibit on hearsay grounds and on the basis that it contained opinions related to accounting, in which Manich had no demonstrated expertise. Manich's counsel responded that both Jordan and Manich had prepared the first page of the exhibit and that Manich had prepared the third and fourth pages, which contained "the costs projections of an engineer who's done this work." Tr. at 150-51.

Appellants assert that the trial court should have excluded Exhibit 15 pursuant to Indiana Evidence Rule 702(a), which states, “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” “It is within the trial court’s sound discretion to determine whether a person qualifies as an expert witness.” *Shady v. Shady*, 858 N.E.2d 128, 138 (Ind. Ct. App. 2006), *trans. denied* (2007). A witness may qualify as an expert on the basis of his practical experience alone. *Id.*

To the extent Appellants claim that Exhibit 15 was inadmissible because Manich “did not have an accounting degree or background[,]” Appellants’ Br. at 11, we note that Manich received his engineering degree from Purdue in 1950 and served as Lake County surveyor for twenty-eight years. We believe that this wealth of practical experience was more than sufficient to render admissible his number-crunching efforts for the subdivision project. Moreover, as Manich points out, Exhibit 15 was not “offered as accountant opinions as to what profits would be, but rather as ... his projections as to costs so that [he and Jordan] could set price.” Appellee’s Br. at 6. To the extent Appellants claim that Manich’s estimates did not account for engineering, overhead, cost overruns, and the construction of single-family units in Phases II and III, these omissions go to the weight and not the admissibility of the exhibit.<sup>4</sup> In sum, we cannot conclude that the trial court abused its discretion in admitting Exhibit 15.

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<sup>4</sup> In fact, Appellants addressed these omissions during their cross-examination of Manich and their case in chief.

Appellants also contend that the trial court abused its discretion in admitting Manich's testimony regarding projected profits based on the estimates for the original subdivision plan. Given that the testimony consisted of mathematical computations derived from Exhibit 15 and was offered only to establish projected profits, we cannot conclude that the trial court abused its discretion in admitting it.

Having addressed Appellants' admissibility issues, we turn now to the trial court's denial of their motion for judgment on the evidence. We disagree with Appellants' premise that Exhibit 15 and Manich's corresponding testimony were the only evidence regarding damages. The jury had an opportunity to review six years' worth of Troutwine's tax returns, which were completed by Jordan's tax preparer, and heard testimony regarding the project's income, expenses, planning changes, and cost overruns. The jury was the exclusive arbiter of the weight of the evidence and the credibility of the witnesses. We cannot say that there was an absence of evidence or reasonable inferences in favor of Manich on the issue of damages. Consequently, we affirm the trial court's denial of Appellants' motions for judgment on the evidence.

## ***II. Sufficiency of Evidence Regarding Manich's Membership in Troutwine***

Appellants contend either that Manich never was a member of Troutwine or that he dissociated himself from Troutwine and therefore was not entitled to a share of its profits. In other words, Appellants challenge the sufficiency of the evidence regarding Manich's membership in Troutwine.

Our standard of review of sufficiency of the evidence is the same in civil cases as in criminal cases. We consider only the evidence most favorable to the verdict and the reasonable inferences to be drawn therefrom. We will not reweigh the evidence or judge the credibility of the witnesses. The verdict will be affirmed unless we conclude that it is against the great weight of the evidence.

*Indian Trucking v. Harber*, 752 N.E.2d 168, 172 (Ind. Ct. App. 2001) (citations omitted).

Regarding Appellants' assertion that Manich never was a member of Troutwine, we note that both the operating agreement and Troutwine's tax returns indicate that Manich was a member with a one-third interest in the LLC. Appellants' App. at 92-97. To the extent Appellants argue that Manich had a lesser interest because he did not make sufficient contributions or made contributions only in his corporate capacity through ComSub, Troutwine's tax returns are essentially a party admission to the contrary and are therefore sufficient to support a finding that Manich had a one-third membership interest in Troutwine.

In contending that Manich dissociated himself from Troutwine, Appellants rely on Manich's July 1998 letter to the City stating that ComSub would no longer supervise the project. Quite simply, Manich's letter says nothing about withdrawing his membership. *See id.* at 91 ("Effective July 1, 1998, please be advised that Comsub Design & Engineering will not provide Engineering construction supervision of the subdivision improvements for the Troutwine Estates Condominium project. Please feel free to call me if you have any questions.'). Consequently, we affirm the jury's verdict in favor of Manich.

Affirmed.

BARNES, J., and BRADFORD, J., concur.